GREATER NAPLES CIVIC ASSOCIATION
378 Goodlette Road South
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RESPONSE TO NOTICE OF PROPOSED RULEMAKING
FEDERAL COMMUNICATIONS COMMISSION

In the matter of	]	
	]	
Implementation of	]	
Sections of the Cable	]	MM Docket 92-266
Television Consumer	]	
Protection and Competition	]	
Act of 1992	]	

BACKGROUND

The Greater Naples Civic Association (GNCA) is an independent, non-profit research and community action group with 660 members in the greater Naples, Florida, area. It was established in 1926. Since cable television was introduced in the Naples area in the late 1960's, GNCA has been a citizens' advocate.

OVERVIEW

GNCA sees cable television much like any other local government contractor. Cable television provides a service on behalf of government, for which local government is responsible. Local government provides the means (rights of way), the authority (franchise) and the homes passed (residents) for cable television to function. Local government must have the authority to control its local cable television franchisee, including flexibility for rate regulation.

The federal government's involvement in local government's authority is unfortunate and has proven to be highly detrimental to communities.

Including an 8.5% increase announced by the Naples area cable operator to be implemented February 1, 1993, rates will have increased 151% for the preferred basic and 165% for additional outlets since de-regulation in 1986. The latest increase was announced after the effective date of The Cable Act of 1992.

Cable subscribers are required to subscribe to either 12 channels at $16.43 ($1.37 per channel per month) or 49 channels for $24.20. Most of the significantly-viewed

satellite channels formerly within the 24 channels in 1985 (mostly between channels 2 through 13) have been distributed throughout the preferred basic service

creating a "forced upgrade" situation.

The so-called "bulk rate" agreements have been disastrous to our community with multi-family rates now in effect as low as $4.95 per month per unit for cable service packages for which single-family residents pay over $30 per month. Local governments need the authority to assure that a cable operator does not use single-family service revenues to offset losses in the multi-family market.

Local governments have been unable to respond to either the rate or channel-lineup issues. Cable television is primarily a local issue. Therefore, maximum authority permitted under The 1992 Cable Act should be restored to local government.

SUMMARY OF POSITIONS ON FCC PROPOSALS

Effective Competition--GNCA agrees with FCC's position that local government be the authority to determine the existence or non-existence of "effective competition."

Franchise Authority Certification--GNCA agrees with the FCC's proposed procedures for franchise authority certification.

Regulation Basic Service Tier--GNCA disagrees with the FCC's proposed position to regulate basic service tiers by the "benchmarking" method, utilizing existing industry data to determine the "benchmark." GNCA believes that industry data is inadequate because of lack of any significant, mature "effective competition" in the United States and there are too many local variables for "benchmarking" to be an accurate and appropriate method. GNCA instead proposes the return-on-investment method, identifying appropriate and reasonable revenues, expenses and a rate or rates which provides a reasonable profit. There is considerable governmental experience regulating public utilities including benchmarks on profit levels from those industries whether they be telephone, electric, water and sewer or natural gas. We also urge rate rollback authority be granted local government, with additional authority to order rate refunds for excessive charges since the effective date of The Cable Act of 1992 in December, 1992.

Regulation of Expanded Service Tiers--GNCA disagrees with the FCC's proposed position of the "benchmarking" method on the same grounds enumerated above. We also urge the FCC to include in its rules the authority for rate rollback and rate refunds for excessive charges since the effective date of The Cable Act of 1992.

GNCA POSITIONS

EFFECTIVE COMPETITION

We find the FCC proposed rule that franchise authorities make the determination as to whether or not effective competition exists reasonable.

FRANCHISE AUTHORITY CERTIFICATION

We find reasonable the FCC proposed rule on franchise authority certification. The FCC's proposed safeguard that the franchise authority must file its intent with the franchise holder provides for the opportunity for filing of objections by the franchise holder. GNCA would also suggest that the franchise authority be required to authorize the filing with the FCC in a public meeting at which time public comments must be heard.

REGULATIONS GOVERNING RATES OF THE BASIC SERVICE TIER

GNCA supports a return-on-investment (cost-of-service) methodology for determining rates on the basic service tier. In doing so, we express concern over the FCC's proposed "benchmarking." The concept of "benchmarking" is one that we think is difficult if not impossible to establish in cable.

It has several inherent problems:

1. Benchmarking would depend upon an identifiable, bona fide competitive rate. The competition that has existed in the cable industry has not been bona fide competition because of several factors:

    a. There are few mature overbuilds which encompass the entire franchise area. Overbuilds tend to be in the high penetration, densely populated areas. Almost all overbuilds in Florida have been purchased by the originally-franchised cable operator and been discontinued. Municipal systems use low-interest bond money, do not pay franchise fees and use shared facilities paid for by taxes. Therefore, the rates municipal systems charge are not rates set by the competitive market.

    b. MMDS systems are concentrated in urban areas. Few are mature and none offer the channel selection of traditional cable. MMDS also does not offer the convenience of cable in reception of "off air channels." DBS has not had any substantial effect on the cable market.

    c. Cable competitors have not been able to acquire programming on a truly competitive basis.

d. Basic service has not been the object of competition. Typically, satellite channels have been the appeal to the subscriber.

2. "Benchmarking" does not account for the fact that most cable programmers are owned by cable operators. Some cable programming costs with our cable operator have increased over 500% in the past five years. Cable programmers have become involved in "bidding wars" with broadcasters. The net result is consumers are now paying for programs they used to see on broadcast channels for free, i.e. NFL football. Admittedly, this issue is more pertinent in the discussion of the additional tier regulation but applies to the basic tier regulation as well. Regulators, in order to determine the appropriate rate, must have the authority to determine if the costs are reasonable, i.e. programming costs. The major cable companies who own cable programmers could decide if they can't make the profit they want in offering cable service they will make in cable programming. It is interesting to note that cable programmers advertising revenues have substantially increased while their rates to the cable systems have also dramatically increased.

3. We do not see how "benchmarking" could take into account the many factors which should provide for differences in rates based upon local operating conditions:

a. penetration levels and homes per mile
b. advertising revenues and other sources of additional revenues such as pay per view, pay television, telecommunications services, tower rent, etc.
c. the age of the cable system
d. overall channel capacity and amenities of the cable system

How does "benchmarking" differentiate by rates a community which wants a state-of-the-art 550 mhz two-way fiber optics system while another is satisfied with a 300 mhz, older coaxial system?

4. How will "benchmarking" address rate roll backs? Our cable operator is imposing an 8.5% increase

after the effective date of the statute and only 65 days before the rules go into effect. Rate roll backs must be addressed in any formula.

5. "Benchmarking" does not define reasonable profit as required by the statute. Reasonable profit implies

that the cost of operation is identified and applied to some defined standard. What is that standard under the benchmark rates?

6. About 40% of the Naples area system is comprised of multi-family subscribers, many of whom have been granted deeply-discounted rates, resulting from so-called "competition" when SMATV operators entered the market. These rates are far below the single family rate--$4.95 compared for expanded service with two outlets compared to the same level of service for single-family subscribers at $30 per month. We believe the multi-family units on discounted rates are being subsidized by single-family units. This is not an uncommon situation wherein SMATV operators, free of regulation and the burden of serving less dense areas, have caused significant disruption in fairness in pricing between types of subscribers. How will "benchmarking" address this unique market condition? Basic service alone is rarely if ever offered by SMATV operators. Therefore, will reliable data be available on basic service charges? The Cable Act requires "a cable operator shall have a rate structure, for the provision of cable service, that is uniform through-out the geographic area." How is the FCC's benchmark rate going to address a uniform rate without considering rate of return? How will the benchmark rate protect the cable subscriber from cross subsidies between classes of subscribers? Local governments need the authority to keep cable operators from cross subsidizing classes of services.

7. How is "benchmarking" going to develop a fair standard for additional outlets? Additional outlets have little or no overhead. Yet prices for additional outlets have substantially increased since de-regulation, 165% in the Naples area. A return-of-investment method could pinpoint the cost of additional outlets and develop an appropriate rate.

While the statute establishes a worthwhile goal of setting rates as if the system were subject to "effective competition," we do not feel that this goal is achievable from existing industry data.

Admittedly, the statute requires that the FCC develop rules that reduce burdens on cable operators, franchising authorities, the FCC and consumers, we do not believe Congress intended that the ease of regulation interfere with its effectiveness.

We urge the FCC to keep in mind that local governments usually own utility systems. They consistently conduct rate analyses using return-on-investment type procedures, excluding the profit factor, to set utility rates. This

process is required by bond covenants and usually performed by consulting rate specialists.

Commissioners should also keep in mind that consumers are already paying for regulatory efforts of local governments through franchise fees. Frankly, since rate de-regulation in 1986, local governments have enjoyed a windfall because the regulatory requirements were significantly reduced but the franchise fees were not in our area.

We do suggest that the FCC could simplify the process of return on investment by establishing the process and factors thereof which are usually the basis of disagreement. We recognize the FCC has proposed standard accounting methods.

In conclusion, local governments which want to use the return on investment should not be precluded from doing so by FCC regulations. If the FCC adopts a "benchmarking" process, GNCA suggests that the FCC allow local governments or cable operators to opt for the cost-of-service (return on investment) method to validate or invalidate the benchmark rate. This does not imply we agree with the benchmark rate process. GNCA does not.

REGULATION OF UNREASONABLE RATES

Our position and many of our arguments against benchmark rates for basic cable service regulation also apply to the FCC's requirement to regulate unreasonable rates. Our additional comments include:

1. The Cable Act not only requires that the FCC consider charges for similar services by other systems and history of rates but also the overhead costs and incomes from other sources. We question how "benchmarking" can address the particular situation in each franchise area without considering total revenues, total expenses and a reasonable profit. We argue that the FCC will be unable to determine the "reasonableness" of the tier rate or rates without considering the income, overhead and profit levels from non-regulated services offered by the cable operator such as pay-per-view, pay television and advertising. The FCC should keep in mind that cable is on the verge of a significant entry into additional telecommunication services using existing cable television plants. How will "benchmarking" protect cable subscribers from cross-subsidization? Only a rate-of-return process can accomplish that.

2. While we understand the FCC's concern about consumers' ability to file a complaint if rate-

of-return (cost of service) procedures were adopted, we suggest that this can remedied by requiring that cable operators be obligated to provide the required data to local franchise authorities and those authorities be required to reasonably assist in filing the complaint.

3. We do not find any appropriate justification for restraint of release of financial information by the cable operator to the franchise authority. The mere fact that the cable operator is regulated indicates there is no significant competition. Therefore, the proprietary argument is not a valid one. This disclosure should include rates paid to programmers to protect consumers from unreasonable programmer rates, the majority of which are owned, at least in part, by cable operators. Most cable franchises already have requirements for financial statement disclosure.

4. We agree with the FCC proposal that it does have the authority to rollback rates, regardless of when those rates were adopted. However, we disagree that the FCC does not have the authority to require rate refunds for rate increases adopted before rate regulations were adopted. The FCC has the authority to require rate refunds from increases adopted after the effective date of the Act.

5. Any and all regulation and data collection should be by franchise, or in the event franchise authorities have created a consortium, by that unit.

Submitted by,

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